IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: A. MORTON	Confirmation No.: 6774
Appln. No.	: 10/532,208	Group Art unit: 1771
Filed	: April 28, 2005	Examiner: P. Y. Choi
For	: CONDENSATION DRYER FABRIC	

REQUEST TO RE-TRANSMIT NOTICE OF NON-RESPONSIVE AMENDMENT AND TO RESTART PERIOD FOR REPLY AND REQUEST FOR CONSIDERATION UNDER APPROPRIATE STANDARD

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop **Amendment**
Randolph Building
401 Dulany Street
Alexandria VA 22314

Sir:

Applicant hereby requests the U.S. Patent and Trademark Office to re-transmit the Notice of Non-Responsive Amendment dated January 23, 2008, and to restart the period for reply to run from the date on which the Notice of Non-Responsive Amendment is re-transmitted. Applicant submits that, while they receive correspondence from the U.S. Patent and Trademark Office via email, they never received a copy of the Notice of Non-Responsive Amendment dated January 23, 2008.

Request to Re-Transmit Notice of Non-Responsive Amendment and to Restart Period for Response

On January 2, 2008, Applicants filed a Response under 37 C.F.R. §1.111. As a subsequent action was not received within four months of the response date, i.e., by May 2, 2008, Applicants performed a routine review of the U.S. Patent and Trademark Office PAIR system to find the status of the application. As the Image File Wrapper (IFW) indicated a Notice of Non-

Responsive amendment was sent on January 23, 2008, the undersigned reviewed a computerized report of Applicants' U.S. counsel's docketing database system which lists all email transmissions received from the U.S. Patent and Trademark Office with a transmission date for one day prior to and one day after the January 23, 2008 date shown in the IFW. A copy of this list is enclosed, however, the attorney docket numbers and customer numbers for each file has been redacted. As can be seen from the redacted report, receipt of any correspondence related to the U.S. Application Number to the present application, i.e., 10/532,208, is absent from the list.

Once it had been ascertained that the Notice was not received, the undersigned contacted the Examiner on May 2, 2008 to inquire as whether the Examiner could determine if and when the Notice of Non-Responsive Amendment was forwarded to the undersigned. The Examiner was unable to positively determine a date/time or even if the paper was forwarded to the undersigned. As no it could not be determined whether the paper in fact was forwarded to the undersigned, Applicant requested retransmission of the Notice and that the period for response be restarted. The Examiner indicated that the period could not be restarted without a suitable request being made in writing.

Applicant notes, as this request is being filed within one month of becoming aware of the Notice of Non-Responsive Amendment, this response is timely and not prejudicial. Therefore, granting of the request and restarting the period is proper.

Accordingly, Applicants respectfully request that the Notice of Non-Responsive Amendment be re-transmitted, and that the time period for responding thereto be restarted to run from the date of the re-transmission. Further, Applicants respectfully request that the Examiner confirm that this delay will not be used to reduce the term of any patent that issues from this

application, as the non-delivery of the original Final Office Action was not the fault of Applicants.

Request to Reconsider Amendment Under Correct Standard

Further, in effort to advance prosecution in this matter, Applicant further submits herewith a request that Examiner reconsider Applicant's January 2, 2008 response under the Unity of Invention Standard. In this regard, Applicant notes the Examiner's Notice of Non-Responsive Amendment is based upon MPEP §§ 818.01 and 818.02, which are directed to U.S. restriction practice and not to Unity of Invention, which is applicable in the pending application.

Applicant's representative conducted a further telephone conversation with Examiner Choi on May 7, 2008 to discuss the Notice. In the telephone conversation, Applicants pointed out that the Notice of Non-Responsive Amendment was based upon U.S. restriction practice and not upon the Unity of Invention standard.

Therefore, should the Examiner wish to maintain his position that amendment of January 2, 2008 is non-responsive, Applicants request that the Examiner render this decision under the correct standard, i.e., Unity of Invention.

Further, Applicant notes that Examiner has not identified a section of the MPEP that supports his assertion that Applicant's January 2, 2008 amendment is non-responsive, particularly when no lack of unity has been established. In fact, Applicants submit the Examiner has not even shown that the amendment would have been non-responsive after a showing by the Examiner that the original and amended inventions lack unity (which Applicant submits he cannot).

Applicant acknowledges the initial election was based solely upon a species election

requirement based upon Unity of Invention. Further, Applicant notes the amended claims recite the elements presented in the original claims and further recite generic subject matter, such that the amended claims do not violate Applicant's species election. As the claims are directed to elected species, Applicant submits the pending claims comply with the elected species and therefore are fully responsive and should be acted on by the Examiner.

Applicant's original claims were directed to a fabric that is multilayered and specially designed for use in a dynamic condensation dryer. Moreover, certain original dependent claims defined portions of the fabric in relation to the dryer, e.g., machine side surface and machine side surface layer. In the January 2, 2008 amendment, the independent claim was amended to recite the combination of the fabric and the dynamic condensation dryer, which is directed to the subject matter of the original claim, and additionally includes generic subject matter.

As noted above, the Examiner has not analyzed the original independent claim and the amended independent claim under the Unity of Invention standard to determine whether the claims lack unity. Without this analysis, Applicant submits no determination can be made that the amended claims are directed to a non-elected invention and/or that the amendment is non-responsive.

As noted above, Applicant submits that the original claim is directed to a fabric specially designed for use in a dynamic condensation dryer, whereas the amended claims recited an apparatus including the fabric in combination with the dynamic condensation dryer. As the amended claims recite the features presented in the original claims, Applicant submits unity is established. Further, Applicant notes the original and amended claims can be considered a product and apparatus specially designed for use of the product, which can be considered to

comply with the Unity of Invention standard.

Still further, Applicant also notes the Examiner supports his position by indicating that the amended claims are distinct from the original claims because of a separate classification and different search. As set forth in MPEP § 1850, subsection II:

> [f]rom the preceding paragraphs it is clear that the decision with respect to unity of invention rests with the International Searching Authority or the International Preliminary Examining Authority. However, the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups.

Thus, Applicant submits the basis for alleging the January 2, 2008 amendment non-responsive is improper and should be reconsidered under the Unity of Invention standard.

Therefore, Applicant submits the January 2, 2008 amendment is responsive under the Unity of Invention standard, and an examination on the merits of the amended claims is respectfully requested.

Authorization to Charge Deposit Account

As Applicant has shown the Notice of January 23, 2008 was not received by the undersigned, and as Applicant has responded within one month of being made aware of the Notice, no fees are believed necessary for submission and consideration of this paper. However, undersigned authorizes the charging of any necessary fees, including any extensions of time fees to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

Should the Office have any questions or comments regarding the present application, the Office is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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May 22, 2008
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